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NG KAE JENG v. INVENPRO (M) SDN BHD & ORS; COMPANIES COMMISSION OF MALAYSIA (INTERVENER)

HIGH COURT MALAYA, KUALA LUMPUR
ATAN MUSTAFFA YUSSOF AHMAD J
B [ORIGINATING SUMMONS NO: WA-24NCC-337-07-2024]
9 SEPTEMBER 2025

Abstract – *A stay of execution will be granted where special circumstances are established, particularly when immediate execution of the order would lead to irreversible consequences that could render an appeal nugatory.*

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CIVIL PROCEDURE: *Stay – Stay of order – Application for – Director commenced oppression action – Oppressive conduct in management of company – High Court ordered reinstatement of director, disqualification of opposing party from directorship and removal of company secretary – Opposing party filed appeal at Court of Appeal and sought stay of execution of order pending determination of appeal – Whether there were special circumstances warranting stay of order – Whether immediate implementation of order would render appeal nugatory – Whether would cause irreversible prejudice – Whether application ought to be allowed*

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The plaintiff and the second defendant were the directors of the first defendant ('company'), with each party holding equal shares of 50%. Without the plaintiff's knowledge or consent, he was removed from his position as the director of the company and the third defendant was appointed as the company's company secretary. This prompted the plaintiff to commence the present action, seeking various declarations and orders relating to his removal as director and the appointment of the third defendant as company secretary ('underlying action'). During the period following the removal of the plaintiff as the director, the company entered into agreements to sell two of its properties, the combined value of which was approximately RM8.3 million. The proceeds were designated for the settlement of the company's debts to various banks, payment of Government taxes and discharge of obligations to trade creditors. Concurrently with the property transactions, the company, acting through the second defendant, filed two separate actions against the plaintiff, namely: (i) a claim for approximately RM3.4 million in damages for alleged breaches of fiduciary duties, unlawful interference with trade, conspiracy to injure and other related claims; and (ii) an intellectual property case involving claims for copyright infringement, breach of confidence and torts of conversion, conspiracy and unlawful interference with trade. The court granted judgment in favour of the plaintiff in the underlying judgment and made orders/declarations that: (i) the plaintiff remain a director of the company, that his dismissal was null and void and the appointment of the company secretary was invalid; (ii) the

second defendant was disqualified as a director of the company for five years; and (iii) the plaintiff was granted the full authority to conduct the affairs of the company. The defendant appealed against the said decision to the Court of Appeal and the appeal was fixed for case management. In the present application, the defendants sought a temporary stay of execution of the order pending the determination of their appeal ('encl. 29').

Held (allowing encl. 29):

(1a) Substantial payments, totalling approximately RM8.3 million, had been made to various creditors, including secured bank creditors, Government authorities for taxes and trade creditors. These payments were made pursuant to legitimate debts owed by the company and the recipients had clear legal rights to retain such payments. The banks, as secured creditors under facility agreements, had particularly strong legal protections for the payments received. If the order was executed immediately and the underlying resolutions were invalidated, the plaintiff would be unable to reverse these payments or restore the parties to their original positions. (paras 30 & 34)

(1b) The second defendant had specific authorisation through member resolutions from all shareholders to complete these transactions, whereas the plaintiff lacked such specific mandate. The defendants' estimate requiring three to four months to complete the second property transaction and ensure all creditors were properly settled. This represented a relatively modest period during which the *status quo* could be preserved without significant prejudice to the plaintiff, particularly given that the company's fundamental governance structure would be resolved through the eventual determination of the appeal. (para 38)

(2) Maintaining the established payment arrangements for the limited period required to complete the appeal process represented a legitimate special circumstance that justified the temporary stay sought. The temporary continuation of proven payment arrangements pending appeal served the interests of all parties by preserving the company's position with its secured creditors whilst allowing the substantive issues to be determined through the proper appellate process. The alternative of immediate disruption to these arrangements carried unacceptable risks of triggering defaults and enforcement proceedings that could render the appeal nugatory regardless of its ultimate outcome. (para 53)

(3) The defendants' dismissal and disqualification had rendered them legal 'strangers' to the company, lacking the requisite authority under the Companies Act 2016 to effect changes to the company's registration with the Companies Commission of Malaysia ('CCM'). As the reinstated director, the plaintiff possessed the power to effect the

necessary updates with the CCM. However, this did not resolve the immediate practical difficulty that the order, as presently framed, appeared to place obligations upon parties who lacked the legal capacity to discharge them. The presence of the penal notice attached to the order created a genuine risk that the defendants could face contempt proceedings for non-compliance with requirements that were legally impossible for them to fulfil. (paras 69 & 70)

(4) The immediate execution of the order would result in the permanent loss of the company's pending suits worth millions of ringgit, as the plaintiff would inevitably terminate actions against himself, with limitation periods ensuring this loss was irreversible. Allowing these substantial claims to be permanently extinguished through the inevitable exercise of conflicted directorial discretion would cause irreparable prejudice to the company that could not be remedied regardless of the outcome of the appeal. The defendants, as 50% shareholders of the company, had legitimate interests in ensuring that substantial potential recovery was not lost through the operation of unavoidable conflict of interest. (paras 85 & 86)

(5) The defendants had established compelling special circumstances that warranted the granting of a temporary stay of execution. The order, if executed immediately, would create irreversible consequences that could not be remedied even if the defendants succeeded in their appeal. The execution of the order was therefore stayed pending the final determination of the defendants' appeal to the Court of Appeal. (paras 87 & 88)

Case(s) referred to:

A & M Beauty Wellness Sdn Bhd v. Shopee Mobile Malaysia Sdn Bhd [2021] CLJU 84; [2021] 1 LNS 84 HC ***(refd)***

Dato' Seri Yusof Dato' Biji Sura v. BTM Timber Industries Sdn Bhd & Ors [2009] 5 CLJ 412 CA ***(refd)***

Erinford Properties Ltd And Another v. Cheshire Country Council [1974] 1 Ch 261 ***(refd)***

Huang Min & Ors v. Malaysian Airline System Bhd & Ors [2018] 1 CLJ 434 CA ***(refd)***

Kosma Palm Oil Mill Sdn Bhd & Ors v. Koperasi Serbausaha Makmur Bhd [2003] 4 CLJ 1 FC ***(refd)***

Low Nam Hui & Sons Sdn Bhd v. Huang Yan Teo [2007] 6 CLJ 27 CA ***(refd)***

Ming Ann Holdings Sdn Bhd v. Danaharta Urus Sdn Bhd [2002] 3 CLJ 380 CA ***(refd)***

Minnesota Mining & Manufacturing Company v. Johnson & Johnson Limited [1976] RPC 671 ***(refd)***

Overseas Union Bank (Malaysia) Bhd v. Soon Foom (S) Sdn Bhd [2000] 8 CLJ 418 HC ***(refd)***

Perak Integrated Networks Services Sdn Bhd v. Urban Domain Sdn Bhd & Anor [2018] 5 CLJ 513 FC ***(refd)***

Raj Kumar Dey And Others v. Tarapada Dey And Others [1987] 4 SCC 398 ***(refd)***

Renew Capital Sdn Bhd & Ors v. ADM Ventures (M) Sdn Bhd & Anor And Another Appeal [2022] 8 CLJ 817 CA ***(refd)***

Unilever (M) Holdings Sdn Bhd v. So Lai & Anor [2015] 3 CLJ 900 FC ***(refd)***

Legislation referred to:
Companies Act 2016, ss. 58, 346, 347, 348
Courts of Judicature Act 1964, ss. 44, 73

For the plaintiff - Lee Hoe Leong & Kong Kai Yan; M/s HL Lee & Co
For the defendants - Kok Pok Chin & Ng Pau Chze; M/s PC Kok & Co
For the intervener - Muhammad Amir Basaruddin; Companies Commission of Malaysia

Reported by Najib Tamby

JUDGMENT

Atan Mustaffa Yussof Ahmad J:

[1] This judgment concerns an application for a temporary stay of execution of a court order pending appeal in proceedings involving allegations of oppressive conduct in the management of a Malaysian private company. The dispute arose between equal shareholders where one party was removed as director without proper compliance with statutory requirements under the Companies Act 2016.

[2] Following a hearing, the court granted judgment ordering reinstatement as director, disqualification of the opposing party from directorship for five years, and removal of an improperly appointed company secretary. The unsuccessful parties filed an appeal and applied for a stay of execution, arguing that immediate implementation would render their appeal nugatory and cause irreversible prejudice.

[3] The stay application centre on claims that execution would invalidate substantial property sale transactions and result in termination of pending legal proceedings worth millions of ringgit.

Background Facts

[4] The first defendant, Invenpro (M) Sdn Bhd, is a Malaysian company incorporated on 20 June 2005. The plaintiff and second defendant are equal shareholders of the first defendant company, each holding 50% of the shares. Prior to 10 July 2024, the plaintiff served as a director of the first defendant alongside the second defendant.

[5] On 9 July 2024, the third defendant was appointed as company secretary of the first defendant. On 10 July 2024, the plaintiff was removed from his position as director of the first defendant. These events occurred without the plaintiff's knowledge or consent and formed the basis of the underlying oppression proceedings.

[6] On 23 July 2024, the plaintiff commenced the present action by filing Originating Summons No: WA-24NCC-337-07-2024, seeking various declarations and orders relating to his removal as director and the appointment of the third defendant as company secretary.

[7] During the period following the plaintiff's removal, the first defendant company entered into agreements to sell two of its properties. The first property was located at No. 77, Jalan Taming 6, Taming Jaya Industrial Park, 43300 Seri Kembangan, Selangor. The second property was situated at No. 43, Jalan Taming 5, Taming Jaya Industrial Park, 43300 Seri Kembangan, Selangor. The combined value of these two property transactions was approximately RM8.3 million.

[8] The property sales were authorised by members' resolutions signed by both the plaintiff and second defendant in their capacity as shareholders of the first defendant. The proceeds from these sales were designated for the settlement of the company's debts to various banks, payment of Government taxes, and discharge of obligations to trade creditors.

[9] Concurrently with the property transactions, the first defendant company, acting through the second defendant, filed two separate legal actions against the plaintiff. The first action was High Court Suit No: WA-22NCC-520-08-2024 ("Suit 520"), filed in the Kuala Lumpur High Court, claiming approximately RM3.4 million in damages for alleged breaches of fiduciary duties, unlawful interference with trade, conspiracy to injure, and other related claims. The second action was High Court Suit No: WA-22IP-53-07-2024 ("Suit 53"), an intellectual property case involving claims for copyright infringement, breach of confidence, torts of conversion, conspiracy, and unlawful interference with trade.

[10] On 7 March 2025, after a full hearing of the underlying action, this court granted judgment in favour of the plaintiff. The court order dated 7 March 2025 ("the order") included declarations that the plaintiff remained a director of the first defendant, that his dismissal on 10 July 2024 was null and void, and that the appointment of the third defendant as company secretary was similarly invalid. The order further provided for the disqualification of the second defendant as a director of the first defendant for a period of five years and granted the plaintiff full authority to appoint directors and secretaries to conduct the affairs of the first defendant.

[11] On 10 March 2025, the defendants filed their notice of appeal to the Court of Appeal, designated as Appeal No: W-01(NCC)(A)-107-03-2025. The appeal was fixed for case management on 9 June 2025.

[12] On 13 March 2025, the defendants filed the present application for a temporary stay of execution of the order dated 7 March 2025, pending the determination of their appeal.

The Defendants' Application In Encl. 29

[13] The defendants' application in encl. 29, filed on 13 March 2025, seeks a primary order that the decision and the order dated 7 March 2025 be stayed in its execution pending and until the final disposal and decision of all the defendants' appeals to the Court of Appeal filed against the said order and

decision. In the alternative, if the primary order is not allowed, the defendants seek an interim order that the decision and said order be stayed in its execution until the final disposal and decision of the defendants' application to the Court of Appeal for a stay order under ss. 44 and 73 of the Courts of Judicature Act 1964.

[14] The application asserts that special circumstances exist for a temporary stay pending the appeal's disposal.

[15] The supporting affidavit sets out that execution would invalidate property sale transactions approved by both parties, making payments to banks and creditors unrecoverable. The affidavit states the order requires changing the registered address to sold properties and requires dismissed officers to update the records of the Companies Commission of Malaysia ("CCM"), both being impossible to comply with. It asserts execution would result in termination of pending suits against the plaintiff, causing permanent loss of the company's causes of action, and would destroy the defendants' appeal rights constituting irreparable prejudice.

Respective Parties' Submissions

Defendants' Submissions

[16] The defendants contend that special circumstances warrant the granting of a stay of execution. Their primary argument centres on the invalidation of property sale transactions involving two assets of the first defendant company valued at approximately RM8.3 million. They argue that para. 4 of the order, which declares "all resolutions" involving the second defendant to be null and void, will invalidate the member and director resolutions that authorised these property sales. The defendants claim this invalidation would render their appeal nugatory as they would be unable to complete the authorised transactions and settle the company's substantial debts to banks, Government authorities, and trade creditors. They emphasise that only the second defendant has proper shareholder authorisation to complete these transactions, while the plaintiff lacks such authorisation.

[17] The defendants further argue that the plaintiff lacks the ability to restore the original position if the order is executed, as payments already made to banks and creditors from the property sale proceeds cannot be recovered. They contend that banks, as secured creditors, have legal rights to retain payments received, making restoration impossible. The defendants also claim that the order contains impossible obligations, such as the requirement to change the registered address to properties at No. 41 and No. 43, Jalan Taming 5, which have been sold to third parties and are no longer available for use as a registered address.

[18] Additionally, the defendants argue that execution of the order would result in the termination of two pending suits filed by the first defendant against the plaintiff. These suits, valued at approximately RM3.4 million,

allege various wrongdoings including breach of fiduciary duties, unlawful interference with trade, conspiracy, and diversion of company contracts to the plaintiff's own entities. The defendants contend that once the plaintiff becomes sole director with full control, he will inevitably terminate these suits against himself, causing the company to permanently lose potential recovery of millions of ringgit. They argue that after the five-year disqualification period expires, limitation periods will bar any future claims.

[19] The defendants characterise the five-year disqualification of the second defendant as disproportionately harsh, arguing that it effectively prevents a 50% shareholder from participating in company management for an extraordinarily long period. They claim this creates practical impossibilities for corporate governance and transaction completion, despite having proper shareholder resolutions authorising their actions. The defendants emphasise that the company is insolvent with only debts to be settled, arguing there is no risk of adverse consequences if the stay is granted, and that they require approximately three to four months to complete the property transactions and settle all outstanding obligations.

Plaintiff's Submissions

[20] The plaintiff argues that the defendants have fundamentally failed to establish any special circumstances warranting a stay of execution. The plaintiff contends that the property transactions were jointly agreed upon by both the plaintiff and second defendant as equal shareholders of the company, making any concerns about their validity entirely baseless. The plaintiff emphasises that there was consensus between the parties regarding the disposal of company properties and the use of proceeds to settle debts, negating any argument about transaction invalidation.

[21] The plaintiff submits that the defendants have failed to demonstrate how their appeal would be rendered nugatory, which is a fundamental requirement for any stay application to succeed. The plaintiff argues that the primary purpose of the order is simply to reinstate a wrongfully removed director and restore proper corporate governance, and the defendants have provided no explanation of how this restoration would render their appeal meaningless. The plaintiff contends that the appeal process remains fully available to challenge the court's findings, and temporary reinstatement does not prevent appellate review.

[22] Regarding the property sales, the plaintiff reveals that both transactions have already been completed with proceeds dispersed to creditors, leaving only approximately RM700 remaining. This factual development directly contradicts the defendants' claims about future complications requiring three to four months to resolve. The plaintiff argues that the defendants' concerns are therefore entirely speculative and unfounded, as the transactions they seek to protect have already concluded.

[23] The plaintiff submits that the two pending suits were commenced without proper authority and in deliberate breach of statutory requirements under ss. 347 and 348 of the Companies Act 2016. The plaintiff argues that the second defendant deliberately removed the plaintiff as director specifically to circumvent the requirement to seek court leave for derivative actions in the deadlock situation that existed between the 50% shareholders. The plaintiff contends that the second defendant cannot now rely on the consequences of his own wrongful conduct to justify maintaining those improprieties through a stay of execution.

[24] The plaintiff argues that granting a stay would effectively allow this court to sanction ongoing violations of both the company's constitution and the Companies Act 2016. The plaintiff emphasises that the company's constitution requires at least two directors for valid board decisions, yet the defendants seek to maintain a one-man board structure that violates these fundamental requirements. The plaintiff contends that the current arrangement represents a cynical abuse of corporate procedures designed to exclude a legitimate director and manipulate corporate governance.

[25] The plaintiff submits that the balance of convenience clearly favours immediate execution of the order, as the plaintiff has been wrongfully excluded from his directorship for approximately eight months, constituting ongoing prejudice that should not be prolonged. The plaintiff argues that the defendants' fears about debt repayment are unfounded, as it is equally in the plaintiff's interest to ensure proper debt management given his status as a guarantor alongside the second defendant. The plaintiff characterises the stay application as a tactical manoeuvre designed to delay execution of a proper remedy for oppressive conduct, rather than a genuine attempt to preserve legitimate rights pending appeal.

Analysis And Findings Of The Court

Validity Of The Sale And Purchase Transactions And The Resolutions Passed

[26] The defendants contend that para. 4 of the order dated 7 March 2025 will have the effect of invalidating the sale and purchase transactions of the first defendant's two properties, thereby creating special circumstances warranting a stay of execution. They argue that para. 4 declares "all resolutions" involving the second defendant to be null and void, which would encompass both the board resolutions and member resolutions that formed the legal foundation for the property transactions. The defendants submit that these transactions, totalling approximately RM8.3 million, involve the sale of properties at No. 77, Jalan Taming 6, Taming Jaya Industrial Park and No. 43, Jalan Taming 5, Taming Jaya Industrial Park, with proceeds intended to settle the company's debts to banks, Government taxes, and trade creditors.

[27] The defendants further argue that if these resolutions are invalidated, all payments already made to creditors would need to be recalled, which is impossible as these parties have legal rights to receive such payments. They rely on the Federal Court decision in *Kosma Palm Oil Mill Sdn Bhd & Ors v. Koperasi Serbausaha Makmur Bhd* [2003] 4 CLJ 1 which states that the focus of a stay application must be on "the inability of the respondents, if at all, to re-instate them to their original position should they be successful in the appeal". The defendants submit that the plaintiff lacks the ability to restore the original position where debts have been properly settled, as secured creditors such as banks have legal rights to retain payments received for legitimate debts owed by the first defendant.

[28] The plaintiff argues that the defendants' concerns about invalidation of the property transactions are unfounded and constitute a non-issue. The plaintiff submits that these sale and purchase transactions and the utilisation of proceeds were jointly agreed upon by both the plaintiff and second defendant as equal shareholders and were carried out in the best interests of the first defendant company. The plaintiff contends that para. 4 of the order relates specifically to board's resolutions rather than members' resolutions, and therefore does not affect the validity of the shareholder-approved transactions.

[29] The plaintiff further submits that upon reinstatement as director, he is capable of continuing and completing any ongoing transactions from the second defendant, arguing that the reinstatement order does not prevent the continuity of legitimate transactions agreed to during the interim period. The plaintiff relies on the Court of Appeal case of *Ming Ann Holdings Sdn Bhd v. Danaharta Urus Sdn Bhd* [2002] 3 CLJ 380; [2002] 3 MLJ 49, which held that special circumstances must relate to "the execution of the judgment and not to the validity or correctness of the judgment". The plaintiff argues that the defendants' submissions about the validity of the order go to the merits of the appeal rather than proper grounds for a stay application.

[30] Having carefully considered the submissions of both parties and examined the documentary evidence, I find that the defendants have established compelling special circumstances relating to the potential invalidation of the property sale transactions that warrant the granting of a temporary stay of execution.

[31] The critical issue centres on the interpretation and effect of para. 4 of the order dated 7 March 2025, which declares that "all resolutions passed during the period of the dismissal of the plaintiff as a director of the first defendant from 10 July 2024 until the date of reinstatement of the plaintiff's post are null and void and are therefore set aside and cancelled". The plain language of this provision does not distinguish between different types of resolutions, and I reject the plaintiff's attempt to limit its scope to board resolutions only. The phrase "all resolutions" must be given its natural and

ordinary meaning, encompassing both board and members' resolutions passed during the relevant period, thereby retrospectively voiding the property sale transactions worth RM8.3 million that were properly authorised by both shareholders to settle the company's substantial debts to banks and creditors.

[32] The documentary evidence in the defendants' affidavit in support (encl. 30) demonstrates that the property sale transactions were effectuated through a combination of both director's resolutions and members' resolutions. As shown at p. 40 of encl. 30, there is a director's resolution for the sale of property No. 77, followed by the member's resolution at p. 41. Similarly, pp. 74 to 75 show the director's resolution for property No. 43 followed by the corresponding members' resolution. These paired resolutions working in conjunction formed the complete legal basis for the transactions, and the invalidation of either component would undermine the entire structure.

[33] The Federal Court's guidance in *Kosma Palm Oil Mill* provides the appropriate test for determining whether special circumstances exist. The Federal Court emphasised that the focus must be on "the inability of the respondents, if at all, to reinstate them to their original position should they be successful in the appeal". This principle is directly applicable to the present circumstances.

[34] The evidence establishes that substantial payments totalling approximately RM8.3 million have been made to various creditors, including secured bank creditors, Government authorities for taxes, and trade creditors. These payments were made pursuant to legitimate debts owed by the first defendant company, and the recipients have clear legal rights to retain such payments. The banks, as secured creditors under facility agreements, have particularly strong legal protections for payments received. If the order is executed immediately and the underlying resolutions are invalidated, the plaintiff would be unable to reverse these payments or restore the parties to their original positions.

[35] The plaintiff's argument that the transactions were jointly agreed upon by both shareholders, while factually accurate, does not address the legal consequence of the order's invalidation provision. Regardless of the parties' original intentions or agreements, the effect of para. 4 is to render the formal resolutions null and void, thereby removing the legal foundation for the transactions. The fact that the parties may have agreed to the transactions does not cure the legal defect created by the order.

[36] I find that the plaintiff's reliance on *Ming Ann Holdings* is misplaced in these circumstances. While that case establishes that special circumstances must relate to execution rather than validity of the judgment, the present issue directly concerns the practical consequences of executing the judgment,

namely the impossibility of restoring the *status quo ante* if the defendants' appeal succeeds. This falls squarely within the execution-related considerations contemplated by the *Ming Ann* test.

[37] The plaintiff's submission that he could continue the transactions upon reinstatement fails to address the fundamental legal problem created by the invalidation of the underlying resolutions. Even if the plaintiff was willing and able to continue such transactions, the legal basis for the payments already made would remain compromised, potentially exposing all parties to complex legal disputes with creditors and third parties who received payments under what would be retrospectively invalid authorisations.

[38] Furthermore, the evidence reveals that the second defendant has specific authorisation through members' resolutions from all shareholders to complete these transactions, whereas the plaintiff lacks such specific mandate. The defendants estimate requiring approximately three to four months to complete the second property transaction and ensure all creditors are properly settled. This represents a relatively modest period during which the *status quo* can be preserved without significant prejudice to the plaintiff, particularly given that the company's fundamental governance structure would be resolved through the eventual determination of the appeal.

[39] The Court of Appeal in *Renew Capital Sdn Bhd & Ors v. ADM Ventures (M) Sdn Bhd & Anor And Another Appeal* [2022] 8 CLJ 817; [2022] 5 MLRA 303 emphasised that "the merits or the lack of it is not a relevant consideration at the stage of a stay of execution". This reinforces that the court should focus on the practical consequences of execution rather than attempting to prejudge the appeal's merits.

[40] Having weighed the competing interests, I find that the defendants have demonstrated that immediate execution of the order would create an irreversible situation where payments to legitimate creditors could be challenged and potentially unwound, with no realistic prospect of the plaintiff being able to restore the original position. This constitutes the type of special circumstances recognised in *Kosma Palm Oil Mill* and warrants the granting of a temporary stay to preserve the integrity of the appeal process and prevent irreparable prejudice to all parties, including the creditors who have received payments in good faith.

Monthly Commitment To Pay Bank Loans By First Defendant On Behalf Of Second Defendant

[41] The defendants submitted through para. 12 of the defendants' affidavit in support that the second defendant has been consistently servicing the first defendant's monthly bank loans and that a stay ought to be granted to enable the second defendant to continue fulfilling these critical financial obligations on behalf of the first defendant. The evidence before this court establishes that from July 2024 to January 2025, the first defendant has substantial

monthly payment commitments to various financial institutions, including: (i) a total of RM341,220.94 to CIMB term loan; (ii) a total of RM256,892 to AMBANK bank (overdraft + term loan); (iii) a total of RM50,000 to AMBANK bank sinking fund; (iv) a total of RM62,652 to MBB Bank term loan; and (v) a total of RM71,881.14 to OCBC Bank term loan. The defendants emphasised that these payment commitments are exceptionally high and that failure to maintain these payments would result in the banks taking court action against the plaintiff, the first and second defendants, given that both the plaintiff and second defendant have provided personal guarantees to secure these banking facilities. Crucially, the evidence demonstrates that the plaintiff has never assisted in making any debt payments to the banks throughout the relevant period, whilst only the second defendant has consistently made these substantial monthly payments to prevent the first defendant from defaulting on its banking obligations.

[42] The plaintiff contended that the servicing of bank loans constitutes merely an internal corporate matter of the first defendant and that, as a reinstated director, the plaintiff would be positioned to assume responsibility of outstanding loans. The plaintiff argued that both parties, as shareholders of the first defendant, had agreed to dispose of the company properties and utilise the proceeds for debt settlement, including bank loans. The plaintiff submitted that the defendants' concerns about potential legal action by banks represent merely speculative commercial risks that fail to meet the threshold of "special circumstances" required in law. Relying on the Federal Court decision in *Kosma Palm Oil Mill Sdn Bhd & Ors v. Koperasi Serbausaha Makmur Bhd*, the plaintiff argued that the defendants' fears amount to nothing more than "fear of losing" and normal legal consequences that creditors would pursue in debt recovery cases. The plaintiff maintained that exposure to creditor action constitutes a foreseeable legal consequence in commercial indebtedness matters and cannot amount to special circumstances warranting a stay.

[43] Having carefully considered the evidence and submissions of both parties, I find that the issue of monthly bank loan commitments does constitute a special circumstance that weighs in favour of granting the temporary stay sought by the defendants. The undisputed evidence establishes a compelling factual matrix that distinguishes this case from the typical commercial risks contemplated in *Kosma Palm Oil Mill*.

[44] The critical distinction lies in the established pattern of payment responsibility and the practical realities of the first defendant's financial obligations. The evidence demonstrates that over a sustained period from July 2024 to January 2025, the second defendant has been the sole party making substantial monthly payments totalling RM782,646.08 across five separate banking facilities. This is not merely a theoretical obligation but a demonstrated track record of actual performance that has prevented the first defendant from defaulting on secured debt facilities where both parties have provided personal guarantees.

[45] The Federal Court in *Kosma Palm Oil* emphasised that the focus of a stay application must be on "the inability of the respondents, if at all, to re-instate them to their original position should they be successful in the appeal". In the present circumstances, the "original position" includes the second defendant's established role as the party actively servicing these banking obligations. If the order dated 7 March 2025 is executed immediately, this established payment arrangement would be disrupted at a critical juncture when the first defendant faces monthly commitments exceeding RM100,000 to various secured creditors.

[46] The plaintiff's assertion that he can assume responsibility for these payments is not supported by any evidence of past performance or demonstrated capacity. Indeed, the uncontradicted evidence establishes that the plaintiff has never assisted in making any payments to the banks despite being equally liable as a guarantor. This creates a substantial risk that disrupting the current payment arrangements could trigger defaults that would activate the personal guarantees and result in enforcement action against both parties.

[47] Furthermore, the court must consider the practical implications of the Federal Court's guidance in *Low Nam Hui & Sons Sdn Bhd v. Huang Yan Teo* [2007] 6 CLJ 27; [2007] 2 MLRA 301 at p. 38 (CLJ); p. 305 (MLRA), where the Court of Appeal held that "the judge will have to balance the competing interests of the parties. Where the applicant can show that there is no risk that he will dispose of his assets pending appeal. The discretion is to grant a stay". The evidence establishes that the second defendant seeks to continue servicing these debts precisely to preserve the company's assets and prevent foreclosure proceedings that would prejudice all stakeholders.

[48] The present case also differs materially from the speculative fears condemned in *Kosma Palm Oil*. The defendants are not seeking to avoid their obligations but rather to continue fulfilling them in the manner that has proven effective over the preceding months. The risk of banking enforcement is not speculative but immediate and concrete, given the substantial monthly commitments and the personal guarantees in place.

[49] The court must also consider the broader commercial context established by the evidence. The first defendant's auditor has reported that the company is insolvent with debts exceeding RM4.8 million, requiring monthly cash flow of RM500,000 to RM700,000 to maintain operations and service debts. In these circumstances, disrupting established payment arrangements could precipitate a complete financial collapse that would prejudice all parties, including the plaintiff who shares equal liability under the personal guarantees.

[50] While the plaintiff revealed during oral submissions that both property transactions have been completed with proceeds largely dispersed to creditors, leaving only approximately RM700 remaining, this

development actually reinforces rather than undermines the defendants' position. The completion of these transactions demonstrates that the second defendant has successfully executed the shareholder-approved asset disposal strategy and applied the proceeds towards debt reduction as intended. However, this does not resolve the ongoing requirement to service monthly bank commitments that total approximately RM130,000 per month across the various facilities. With the asset disposal now complete and minimal funds remaining, the monthly servicing obligations become even more critical to prevent defaults that would trigger the personal guarantees.

[51] The plaintiff's reliance on the property sale proceeds as a solution fails to address the immediate monthly payment obligations that continue to accrue. Even if the property sales are completed as planned, this does not resolve the ongoing requirement to service monthly bank commitments that total approximately RM130,000 per month across the various facilities.

[52] In these circumstances, I find that maintaining the established payment arrangements for the limited period required to complete the appeal process represents a legitimate special circumstance that justifies the temporary stay sought. This conclusion is reinforced by the UK Court of Appeal's guidance in *Minnesota Mining & Manufacturing Company v. Johnson & Johnson Limited* [1976] RPC 671, recognising that the court should "arrange matters that, when the appeal comes to be heard, the appellate court may be able to do justice between the parties, whatever outcome of the appeal may be".

[53] The temporary continuation of proven payment arrangements pending appeal serves the interests of all parties by preserving the company's position with its secured creditors whilst allowing the substantive issues to be determined through the proper appellate process. The alternative of immediate disruption to these arrangements carries unacceptable risks of triggering defaults and enforcement proceedings that could render the appeal nugatory regardless of its ultimate outcome.

Change Of Registered Address

[54] The defendants contended that the order directing the change of registered address to No. 41 & 43, Jalan Taming 5, Taman Taming Jaya, 43300 Seri Kembangan, Selangor has become impossible to comply with because these two properties have been sold to other buyers. They argued that this creates an impossibility of performance which warrants the granting of a temporary stay. During oral submissions, the defendants' counsel emphasised that the current situation places the defendants at risk of contempt of court proceedings due to the penal notice attached to the order, and that if the plaintiff considers this to be merely an incidental matter, then the proper course would be to formally amend the order to clarify that this obligation rests with the plaintiff rather than with the defendants. The

defendants submitted that they cannot rely on mere verbal statements made in court to resolve this issue and that any understanding should be formalised through an amendment to the terms of the order.

[55] The plaintiff submitted that the order clearly directs the registered address to be changed to No. 41 & 43, Jalan Taming 5, Taman Taming Jaya, 43300 Seri Kembangan, Selangor until the appointment of a new company secretary and the new address of the company secretary is obtained. The plaintiff argued that it is undisputed that this court has granted power to the plaintiff to appoint a new company secretary and that the plaintiff has already identified a suitable candidate. Therefore, there is no difficulty for the new registered address of the first defendant to be changed directly to the address of the new company secretary. The plaintiff contended that the defendants' argument that the order is incapable of compliance is misconceived and repeated their submission that allegations concerning the correctness of the order should not be taken into account in a stay application, as established in *Ming Ann Holdings Sdn Bhd v. Danaharta Urus Sdn Bhd*.

[56] Having carefully considered the submissions of both parties and the documentary evidence before this court, I find that the defendants have established compelling grounds relating to the impossibility of compliance with the registered address requirement that constitute special circumstances warranting the grant of a temporary stay.

[57] The order dated 7 March 2025, specifically in para. 13, directs that "the registered address of the first defendant be changed to No. 41 & 43, Jalan Taming 5, Taman Taming Jaya, 43300 Seri Kembangan, Selangor until an order is made by this Honourable Court for the appointment of a new secretary for the first defendant and the address of the new company secretary is obtained by the plaintiff". The critical issue is that both properties referenced in this address have been sold to third parties, making literal compliance with this specific order impossible.

[58] The legal principle that the law does not compel the impossible is well-established and finds clear application in the present circumstances. In *Overseas Union Bank (Malaysia) Bhd v. Soon Foom (S) Sdn Bhd* [2000] 8 CLJ 418; [2000] 3 MLRH 303, the High Court explained the maxim "*lex non cogit ad impossibilia*" at p. 310, stating that "the law does not compel a man to do that which he cannot possibly perform". This principle was further endorsed by the Federal Court in *Unilever (M) Holdings Sdn Bhd v. So Lai & Anor* [2015] 3 CLJ 900; [2015] 2 MELR 511, where at p. 912 (CLJ); p. 521 (MELR) the Federal Court held that "this can be seen in the legal maxim: '*lex non cogit ad impossibilia*', *ie*, the law does not compel the impossible". The Indian Supreme Court in *Raj Kumar Dey And Others v. Tarapada Dey And Others* [1987] 4 SCC 398 explained at p. 159 that "the two legal maxims *lex non cogit ad impossibilia*, and *actus curiae neminem gravabit* – the law does not compel a man to do that which he cannot possibly perform and an act of the court shall prejudice no man".

[59] The Court of Appeal in *Dato' Seri Yusof Dato' Biji Sura v. BTM Timber Industries Sdn Bhd & Ors* [2009] 5 CLJ 412; [2009] 2 MLRA 212 recognised at p. 423 (CLJ); p. 219 (MLRA) that orders which are "too wide, vague and ambiguous as to make it practically impossible to comply" will not be enforced, and that "an order will not be enforced ... if its terms are vague or ambiguous". The present order creates precisely such a situation by directing compliance with a specific address requirement that has become factually impossible due to the subsequent sale of the referenced properties.

[60] While the plaintiff contends that this matter can be resolved through the appointment of a new company secretary and the use of that person's address, this interpretation requires reading into the order words that are not present. The order is specific in its requirement for the address to be "No. 41 & 43, Jalan Taming 5, Taman Taming Jaya, 43300 Seri Kembangan, Selangor" and does not provide for the immediate substitution with an alternative address without further court intervention. The conditional clause referring to the appointment of a new secretary indicates a two-stage process rather than an immediate alternative mechanism.

[61] The practical consequence of this impossibility is significant. As highlighted during oral submissions, there is a penal notice attached to the order, which exposes the defendants to potential contempt of court proceedings for non-compliance with an order that cannot be literally performed. This creates an unjust situation where the defendants face legal sanctions for failing to accomplish an impossible task. The authorities clearly establish that courts will not countenance such situations and will intervene to prevent injustice arising from impossible performance requirements.

[62] The plaintiff's argument that this constitutes a correctness challenge inappropriate for a stay application, citing *Ming Ann Holdings Sdn Bhd v. Danaharta Urus Sdn Bhd*, mischaracterises the nature of the defendants' submission. This is not a challenge to the substantive correctness of the court's decision to order a change of registered address, but rather a practical impossibility in executing the specific mechanism prescribed by the order. The distinction is crucial: the defendants do not contest the court's power to order address changes, but rather highlight the factual impossibility of complying with the specific address designated.

[63] The Federal Court in *Kosma Palm Oil Mill* established that a key consideration for granting a stay is "the inability of the respondents, if at all, to re-instate them to their original position should they be successful in the appeal". In the present context, the execution of an impossible order creates an irreversible situation where the defendants may face contempt proceedings for non-compliance, consequences that cannot be undone even if their appeal succeeds.

[64] The case of *A & M Beauty Wellness Sdn Bhd v. Shopee Mobile Malaysia Sdn Bhd* [2021] CLJU 84; [2021] 1 LNS 84; [2021] 3 MLRH 254 recognised that "since it was impossible for the defendant to comply with an order ... the balance of convenience was in favour of not granting" such order. By parity of reasoning, where an order has been granted but becomes impossible to perform, the balance of convenience favours granting a stay to prevent the unjust consequences of impossible performance requirements.

[65] I therefore find that the impossibility of literal compliance with the registered address requirement constitutes a special circumstance that weighs in favour of granting the temporary stay sought by the defendants. This conclusion does not undermine the substance of the court's decision but rather recognises the practical necessity of preventing unjust consequences arising from impossible performance requirements pending the resolution of the defendants' appeal.

Update Of CCM's Register

[66] The defendants contended that the second and third defendants, having been disqualified and removed as officers of the first defendant pursuant to the order dated 7 March 2025, no longer possess the power or authority to update the register of CCM as required by the said order. The defendants argued that s. 58 of the Companies Act 2016 expressly provides that changes to a company which require notification to CCM must be effected by the "company" itself, and not by persons who have been dismissed from the company and are no longer related to its management. The defendants submitted that both the second and third defendants cannot be considered as the first defendant "company" or as "officers of the company" within the meaning of s. 58 of the Companies Act 2016, as they have been dismissed, disqualified, and revoked under the order dated 7 March 2025. The defendants further argued that it would be impossible for them to comply with the order because they have become "strangers" to the first defendant company and are no longer part of its corporate structure, having been rendered legally incapable of acting on behalf of the company due to their dismissal and disqualification.

[67] The plaintiff argued that this court possessed wide discretion to order remedies for oppression under s. 346 of the Companies Act 2016, including directing the second and third defendants to update the register of CCM pursuant to the order. The plaintiff referred to para. 39 of the broad grounds prepared by this court, which noted that s. 346 provides a broad remedy for oppression, allowing a member to apply to the court if the affairs of the company are being conducted in a manner that is oppressive to members or in disregard of their interests, and that the court has wide powers to make such orders as it thinks fit to bring an end to or remedy the matters complained of. The plaintiff contended that it was proper for this court to require the second and third defendants to lodge the order to update the

register of CCM, given that the order was made due to the oppressive acts committed personally by the second and third defendants, including the unlawful removal of the plaintiff as the first defendant's director. The plaintiff submitted that in any event, as the reinstated director and officer of the first defendant, the plaintiff also possessed the power to effect the necessary updates with CCM, and accordingly there was no need to grant a stay of execution on this purported ground.

[68] The court finds merit in the defendants' submissions regarding the practical impossibility of compliance with the CCM registration requirements as currently formulated in the order. The fundamental issue centres on the legal capacity of dismissed and disqualified corporate officers to act on behalf of a company after their removal from office. Section 58 of the Companies Act 2016 clearly stipulates that the duty to notify the Registrar of changes in directorship and secretarial appointments lies with the "company" and must be discharged by an "officer" of that company. The order dated 7 March 2025 has created a paradoxical situation whereby the second defendant has been dismissed and disqualified as a director for five years, and the third defendant has been removed as company secretary, yet the same order appears to require these individuals to perform acts that only current officers of the company are legally empowered to undertake.

[69] The court accepts the defendants' argument that their dismissal and disqualification have rendered them legal "strangers" to the first defendant company, lacking the requisite authority under the Companies Act 2016 to effect changes to the company's registration with CCM. This conclusion is supported by the established legal maxim *lex non cogit ad impossibilia*, as recognised by the Federal Court in *Unilever (M) Holdings Sdn Bhd*, which provides that "the law does not compel the impossible". The principle was similarly applied in *Overseas Union Bank (Malaysia) Bhd*, where it was held by the High Court that "the law does not compel a man to do that which he cannot possibly perform".

[70] Whilst the plaintiff has argued that this court possesses wide discretionary powers under s. 346 of the Companies Act 2016 to remedy oppressive conduct, including directing the defendants to update CCM records, such discretion must be exercised within the boundaries of legal possibility and statutory compliance. The court cannot make orders that require parties to act beyond their legal capacity or in contravention of statutory provisions. The defendants' dismissal and disqualification have fundamentally altered their legal relationship with the first defendant company, rendering them incapable of acting as its agents or representatives for statutory compliance purposes.

[71] The court acknowledges the plaintiff's submission that, as the reinstated director, he possesses the power to effect the necessary updates with CCM. However, this does not resolve the immediate practical difficulty that the order as presently framed appears to place obligations upon parties

who lack the legal capacity to discharge them. The presence of the penal notice attached to the order creates a genuine risk that the defendants could face contempt proceedings for non-compliance with requirements that are legally impossible for them to fulfil. This represents a special circumstance that weighs in favour of granting a temporary stay to allow for the proper resolution of these compliance issues.

[72] The court finds that during the hearing on 29 April 2025, the CCM representative, En Muhammad Amir Basaruddin, indicated that manual lodgement of the order at Level 17, Menara SSM, Kuala Lumpur could potentially resolve the compliance requirements. However, this informal arrangement does not address the fundamental legal impediment that dismissed and disqualified officers lack statutory authority to act on behalf of the company. A temporary stay would provide the necessary time for these procedural matters to be properly resolved, either through formal amendment of the order to clarify obligations or through alternative compliance mechanisms that do not require action by legally incapacitated parties.

[73] The court concludes that the practical impossibility of compliance with the CCM registration's requirements as currently formulated constitutes a special circumstance that supports the grant of a temporary stay. The stay would prevent potential injustice to the defendants whilst allowing time for proper resolution of the compliance obligations in a manner consistent with statutory requirements and the legal capacities of the respective parties.

The Two Pending Suits And Discontinuation Concerns

[74] The defendants submit that execution of the order will result in the termination of two pending suits filed by the first defendant company against the plaintiff, namely Suit 520 and Suit 53. They argue that these suits involve substantial claims totalling approximately RM3.4 million for various alleged wrongdoings including breach of fiduciary duties, unlawful interference with trade, tort of conspiracy to injure, tort of deceit, copyright infringement, breach of confidence, and tort of conversion. The defendants contend that once the plaintiff becomes the sole director of the first defendant company with full control, he will inevitably terminate these suits against himself, thereby causing the company to forever lose its right to recover millions of ringgit allegedly taken or stolen by the plaintiff. They assert that after the second defendant's five-year disqualification period expires, the limitation period will have set in, making recovery impossible. The defendants emphasise that these suits represent legitimate claims where the plaintiff allegedly diverted contracts worth millions to his own company, Invenpro Technology Sdn Bhd, and that preserving these proceedings is essential to protect the first defendant's interests.

[75] The plaintiff argues that this concern is fundamentally misconceived because the two actions were filed by the second defendant without the requisite board resolution and without obtaining leave of court under ss. 347 and 348 of the Companies Act 2016. The plaintiff submits that in the deadlock situation existing between equal 50% shareholders and an equally divided board, proper procedure required seeking court approval for derivative action. The plaintiff refers to the Federal Court decision in *Perak Integrated Networks Services Sdn Bhd v. Urban Domain Sdn Bhd & Anor* [2018] 5 CLJ 513; [2018] 4 MLJ 1 which establishes that where there is deadlock in both the Board and shareholders of a going concern company, there is no objection in principle to a shareholder bringing derivative action, but proper procedures must be followed. The plaintiff further notes that Justice Adlin Abdul Majid, who is hearing Suit 53, has indicated during case management that she is minded to strike out the case with liberty to file fresh, recognising that it would be unjust for the case to hang over the defendants indefinitely. The plaintiff characterises the stay application as a tactical manoeuvre designed to maintain and prolong illegal proceedings under the guise of due process, citing *Huang Min & Ors v. Malaysian Airline System Bhd & Ors* [2018] 1 CLJ 434; [2017] MLJU 901 where the Court of Appeal emphasised the unfairness of making parties wait indefinitely for resolution of improperly commenced proceedings.

[76] This court finds the defendants' concerns regarding the potential discontinuation of the two pending suits to constitute compelling special circumstances that warrant the granting of a stay. The evidence establishes that these proceedings represent substantial claims totalling approximately RM3.4 million, involving serious allegations of misconduct that could result in significant recovery for the first defendant company.

[77] Suit 520, contains detailed claims for breach of fiduciary duties, unlawful interference with trade, tort of conspiracy to injure, and tort of deceit. The pleadings demonstrate substantial allegations including the plaintiff's alleged diversion of contracts worth millions of ringgit to his own company, Invenpro Technology Sdn Bhd. Suit 53 involves intellectual property claims including copyright infringement, breach of confidence, tort of conversion, and tort of conspiracy, representing additional potential recovery for the company.

[78] The court accepts the defendants' submission that immediate execution of the order would inevitably result in the termination of these proceedings. Once the plaintiff assumes sole control as director of the first defendant company, it is realistically inevitable that he would exercise his directorial powers to discontinue actions brought against himself. This represents a clear conflict of interest where the plaintiff would be empowered to make decisions that directly benefit his personal position at the expense of the company's potential recovery.

[79] The temporal element of this concern is particularly significant. The order imposes a five-year disqualification on the second defendant, during which period the plaintiff would maintain sole directorial control. By the time this disqualification expires, limitation periods will have irreversibly barred any attempt to revive these claims. The effect would be the permanent and irreversible loss of the company's rights to pursue these substantial claims.

[80] The court finds that this situation falls squarely within the principle established in *Kosma Palm Oil*, where the Federal Court held that a key consideration for granting a stay is whether the successful party has the ability to restore the unsuccessful party to their original position should the appeal succeed. In this case, once these suits are terminated and limitation periods expire, the plaintiff would have no ability whatsoever to restore the first defendant company's right to pursue these claims. The loss would be permanent and irreversible.

[81] Whilst the plaintiff raises procedural concerns regarding the commencement of these suits, the court notes that the filing of legal proceedings by a company director in charge of legal matters is within the ordinary scope of directorial powers. The second defendant has always been the director responsible for legal matters in addition to human resources, information technology, and intellectual property. The initiation of legal proceedings to protect the company's interests falls within his legitimate directorial authority.

[82] Moreover, questions regarding the procedural propriety of these suits go to their merits rather than to the enforcement of the present judgment. As established in *Kosma Palm Oil Mill* and confirmed by the Court of Appeal in *Renew Capital Sdn Bhd*, "the merits or the lack of it is not a relevant consideration at the stage of a stay of execution of the judgment below". These procedural issues should be determined in the appeal proper, not in the present stay application.

[83] The court also considers that these proceedings are currently being supervised by other High Court Judges who have proper jurisdiction over their case management and procedural requirements. The fact that the learned judge in Suit 53 may be considering striking out one suit with liberty to file fresh does not negate the substantive claims involved or the company's legitimate interest in pursuing recovery.

[84] The principle from *Erinford Properties Ltd And Another v. Cheshire Country Council* [1974] 1 Ch 261 is particularly apposite, where the court recognised that "one of the important factors in making such a decision, of course, is the possibility that the judgement may be reversed or varied". The court acknowledged that judges may be clear in their conclusions yet on appeal be held to be wrong, and that preservation of the *status quo* pending appeal may be appropriate where the comparative effects of granting or refusing relief justify such course.

[85] The court finds that allowing these substantial claims to be permanently extinguished through the inevitable exercise of conflicted directorial discretion would cause irreparable prejudice to the first defendant company that cannot be remedied regardless of the outcome of the appeal. The defendants, as 50% shareholders of the company, have legitimate interests in ensuring that substantial potential recovery is not lost through the operation of unavoidable conflicts of interest.

[86] This court concludes that the immediate execution of the order would result in the permanent loss of the company's pending suits worth millions of ringgit, as the plaintiff would inevitably terminate actions against himself, with limitation periods ensuring this loss is irreversible. This constitutes special circumstances that weigh strongly in favour of granting the temporary stay sought by the defendants.

Conclusion

[87] For the reasons set out above, I find that the defendants have established compelling special circumstances that warrant the granting of a temporary stay of execution. The five-year disqualification of the second defendant would create irreversible consequences that cannot be undone if the appeal succeeded, thereby rendering it nugatory. The order dated 7 March 2025, if executed immediately, would create irreversible consequences that cannot be remedied even if the defendants succeed in their appeal.

[88] Accordingly, the defendants' application for stay of execution (encl. 29) is hereby allowed. The execution of the order dated 7 March 2025 is stayed pending the final determination of the defendants' Appeal No: W-01(NCC)(A)-107-03-2025 to the Court of Appeal. The costs of this application shall be costs in the cause of the appeal.